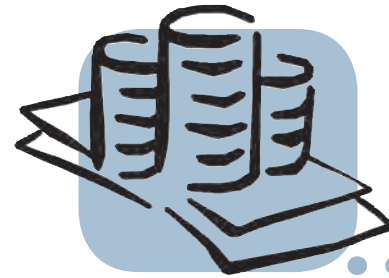




Interest and Penalties



Utah State Tax Commission

210 North 1950 West
Salt Lake City, Utah 84134
(801) 297-7705
1-800-662-4335 ext. 7705
www.tax.utah.gov

If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at (801) 297-3811, or TDD (801) 297-2020. Please allow three working days for a response.

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Introduction

This publication summarizes the provisions for assessing penalties and interest on individual, corporation, partnership and fiduciary returns filed with the Utah State Tax Commission. Specific information on penalties and interest for other taxes are found in the related Utah publications:

- Sales Tax - Publication 25
- Withholding Tax - Publication 14
- IFTA Tax - Publication 15

More information can be obtained by reviewing the specific Utah Code sections 59-1-401 and 402 relating to penalties and interest.

Interest

General Information

Utah Code Section 59-1-402 is the primary authority for interest assessed for all taxes and fees administered by the Tax Commission. Unless otherwise provided by law, the interest rate for a calendar year is calculated based on the federal short-term rate determined by the Secretary of the Treasury under Section 6621, Internal Revenue Code, and in effect for the fourth quarter of the preceding calendar year.

The calendar-year simple interest rate for taxes and fees administered by the Tax Commission is two percentage points above the federal short-term rate and is used to calculate interest for overpayments, refunds, underpayments, deficiencies, and delinquencies.

Interest Rates

The interest rates on underpayment and overpayment of taxes and fees administered by the Utah State Tax Commission are as follows:

<u>Periods</u>	<u>Percentage Rates</u>
Prior to Oct. 12, 1993	12%
Oct. 12, 1993 – Dec. 31, 1994	6%
Jan. 1, 1995 – Dec. 31, 1998	8%

Jan. 1, 1999 – Dec. 31, 2000	7%
Jan. 1, 2001 – Dec. 31, 2001	8%
Jan. 1, 2002 – Dec. 31, 2002	6%
Jan. 1, 2003 – Dec. 31, 2003	5%
Jan. 1, 2004 – Dec. 31, 2004	3%
Jan. 1, 2005 – Dec. 31, 2005	4%
Jan. 1, 2006 – Dec. 31, 2006	6%
Jan. 1, 2007 – Dec. 31, 2007	7%

Overpayments

Generally, no interest shall be allowed on an overpayment of tax if the overpayment is refunded within 90 days after the later of:

- The date the return is due;
- The date the return is filed; or
- The date of the overpayment.

If an overpayment is not refunded within the later of these periods, interest shall be calculated beginning on the 91st day after the commencement of that period.

If an overpayment is generated as a result of an amended return or a request for refund, interest shall accrue from the later of the date the original return was filed or the due date (not including any extensions for filing the original return), to the date the Tax Commission receives the amended return or request. If the Tax Commission does not refund the overpayment shown on the amended return within 90-days after the date the amended return was received, interest will resume beginning on the 91st day after the amended return was received and ending on the date the Tax Commission completes the processing of the amended return refund.

Interest will cease to accrue on a Utah amended return overpayment that resulted from an Internal Revenue Service audit 90 days after the conclusion of the audit. (Utah Code §59-10-529(14)(b).)

Interest is prohibited on refunds arising from a judicial decision declaring a statute to be invalid under federal or state law or unconstitutional under the constitutions of the United States or Utah.

Underpayments

Interest shall be assessed on any underpayment, deficiency, or delinquency of taxes and fees administered by the Tax Commission from the date the original return was due to the date the payment is received by the Tax Commission.

Application of Payment

Payments received by the Tax Commission are first applied to any outstanding penalties, second to any accrued interest, and then to any outstanding tax due for the unpaid filing period. If any collection activity fees are associated with the payment, unless otherwise designated by statute, such fees will be paid first, followed by penalties, interest, and then tax.

If outstanding liabilities exist for more than one tax period, unless otherwise designated by the taxpayer, the Tax Commission will apply any payment to the oldest period first.

See Rule R861-1A-18.

Calculation Guidelines

If a period of underpayment or overpayment spans more than one interest-rate period, interest shall be calculated based on the rate in effect for each interest-rate period. Interest for each interest-rate period shall be calculated for the number of days in the period, divided by 365. The calculation should be rounded to two decimal places.

Interest Calculation Formula

$(\text{underpayment}) \times (\text{interest rate}) \times (\text{number of days}) / 365$

Example: Interest due would be calculated on a tax return due April 15, 2006 and paid on February 15, 2007 with a balance of tax due of \$1,500 as follows:

<u>Period</u>	<u>Days</u>	<u>Rate</u>	<u>Interest</u>
04/15/2006 – 12/31/2006 (\$1,500 x .06 x 260/365)	260	6%	\$64.11
01/01/2007 – 02/15/2007 (\$1,500 x .07 x 46/365)	46	7%	\$13.23
Total interest due			\$77.34

Exceptions

The following taxes and fees administered by the Tax Commission are not subject to the interest calculation discussed in this publication:

- **Title 41, Chapter 1a – Motor Vehicle Act** (except for Section 41-1a-301 dealing with fees related to the apportioned registration and licensing of interstate commercial vehicles);
- **Title 41, Chapter 3 – Motor Vehicle Business Regulation;**
- **Title 59, Chapter 2 – Property Tax Act** (except for Section 59-2-1309 dealing with fees related to the redemption of certain centrally assessed property seized by the Commission);
- **Title 59, Chapter 3 – Tax Equivalent Property Act;**
- **Title 59, Chapter 4 – Privilege Tax;**
- **Title 59, Chapter 13, Part 5 – Interstate Fuel Tax Agreements.**

Penalties

General Information

Utah Code §59-1-401 provides for uniform tax penalties for failure to file tax returns, failure to pay tax due, and failure to file information returns or supporting schedules.

Failure to File a Tax Due Return

The penalty for failure to file a tax due return by the due date is the greater of \$20 or 10 percent of the unpaid tax.

Failure to Pay Penalty

If a tax balance is still unpaid 90 days after the due date, a second penalty of \$20 or 10 percent of the unpaid tax, whichever is greater, will be added for failure to pay timely.

If the failure to file tax due return penalty has been assessed, the failure to pay penalty will not be assessed until 90 days after the due date of the return. If the return is not filed within the 90 days, both the failure to file tax due return and the failure to pay penalties will be assessed upon filing. (See Utah Code §59-1-401-2(b).)

Failure to Make Sufficient Prepayment (Extension Penalty)

An automatic six-month extension to file a return is granted for individual, fiduciary, partnership and corporation tax returns. However, the extension does not apply to the payment of any balance of tax due on the return. Payments are due on the original due date of the return.

A **failure to make sufficient prepayment** penalty will apply if the prepayment conditions below are not met by the original due date of the return.

- Prepayments (withholding tax, prepaid credits, etc.) must equal 90 percent of the current year's tax liability, or
- Prepayments must equal 100 percent of the previous year's tax liability.

If there is an underpayment of tax after applying the above criteria, the penalty on the underpayment will be assessed at a rate of two percent (2%) per month, calculated on a daily basis, until the date the return is filed or the extension expires. The formula for calculating the penalty is:

$$(\text{underpayment}) \times .24^1 \times (\text{number of days outstanding}) / 365$$

¹ 2% rate per month up to a maximum of 6 months, or 12%

The following additional items are noteworthy:

- The extension to file does not cancel the requirement to pay. Interest will be assessed on any unpaid tax from the original due date of the return until the date the tax is paid.
- If you use an extension to file, any extension penalty and interest due should be paid with the return.
- If the previous year individual or fiduciary income tax return was filed and the tax was zero, no prepayment is required. If there is no previous year return, the required prepayment is ninety percent (90%) of the current year's tax liability.
- Corporations must pay the required \$100 minimum tax (per corporation in a combined group) even when there was no previous year return.
- If the return is not filed by the extension due date, failure to file and failure to pay penalties will apply, as if the extension had not been granted.

Underpayment of Corporation Estimated Tax Payments

Corporations are required to make estimated tax payments throughout their tax year if their current year tax liability is \$3,000 or more, or if the tax liability for the previous tax year was \$3,000 or more (unless a first time filer). This provision applies also to parent corporations filing combined reports with affiliated companies when the aggregate amount of tax due is \$3,000 or more for all corporations included in the combined report, including those paying only the minimum tax.

A corporation is not subject to the estimated tax payment requirements the first year the corporation is required to file a Utah return if the corporation makes a payment on or before the due date, not including extensions, equal to or greater than the minimum tax.

Quarterly estimated tax payments are due in four equal payments on the 15th day of the 4th, 6th, 9th and 12th months of the corporation's taxable year. The prepayments must total the lesser of 90 percent of the current year's tax liability or 100 percent of the prior year's tax liability. (See specific details in the TC-20, corporation tax booklet.)

Failure to make the required estimated tax payments could result in an **underpayment of estimated tax** penalty in addition to the above **failure to make sufficient prepayment** penalty.

The penalty rate for the **underpayment of estimated tax** for a corporation is the interest rate provided under Section 59-1-402 (see above) plus four percentage points. For example, the penalty rate for the calendar year 2007 would be 11 percent (7% regular interest rate + 4% additional penalty rate). The penalty rate is applied to the underpayment amount calculated for each estimated tax period, multiplied by the number of days in the period and divided by 365.

Exceptions may apply to negate the penalty. (See specific details in the TC-20, corporation tax booklet.)

Additional Penalties and Fines

Utah Code provides for additional penalties in the following circumstances:

- If any underpayment of tax is due to negligence, the penalty is 10 percent of the underpayment.
- If any underpayment of tax is due to intentional disregard of law or rule, the penalty is 15 percent of the underpayment.
- If any underpayment results from intent to evade the tax, the penalty is the greater of \$500 per period or 50 percent of the tax due.
- If the underpayment is due to fraud with intent to evade the tax, the penalty is the greater of \$500 per period or 100 percent of the underpayment.
- If there is a failure to file an information return or a complete supporting schedule, the penalty is \$50 for each return or schedule up to a maximum of \$1,000.
- If a tax return or an information return is filed without all the required information, including all taxpayer identification numbers and account numbers, the penalty is \$50 for each return up to a maximum of \$1,000.
- If a taxpayer, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of the tax law and files a purported return that fails to contain information from which the correctness of reported tax liability can be determined or that clearly indicates the tax liability shown must be substantially incorrect, the penalty is \$500.
- Any person required to collect, truthfully account for, and pay over any state and local sales and use tax; transient room tax; resort communities tax; public transit tax; tourism, recreation, cultural, and convention facilities tax; motor fuel, clean fuel, special fuel, and aviation fuel tax; and withholding tax, who willfully fails to collect the tax, fails to truthfully account for and pay over the tax, or attempts in any manner to evade or defeat any tax or the payment of the tax, shall be liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. This penalty is in addition to other penalties provided by law.
- Any person who, with intent to evade any tax or requirement of Title 59, Revenue and Taxation, of the Utah Code, or any lawful requirement of the Tax Commission, fails to make, render, sign, or verify any return or to supply any information within the time required by law, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony, and may be fined not less than \$1,000 or more than \$5,000.

- Any person who intentionally or willfully attempts to evade or defeat any tax or the payment of a tax is, in addition to other penalties provided by law, guilty of a second degree felony, and may be fined not less than \$1,500 or more than \$25,000.

Preparer Penalties

The person who prepares, presents, procures, advises, aids, assists or counsels another on a return, affidavit, claim or similar document administered by the Tax Commission, and who knows or has reason to believe it may understate a tax, fee or charge is subject to both a civil penalty (\$500 per document) and criminal penalties (second degree felony plus a fine from \$1,500 to \$25,000). See Utah Code §59-1-401(9) and (10) for specific details.

Waivers

Utah Code §59-1-401(10) authorizes the Tax Commission to waive, reduce, or compromise any penalties or interest that may be imposed, based on reasonable cause.

For more information about waiver procedures and reasonable cause, see Tax Commission Publication 17.

Online Penalty and Interest Calculator

For help in calculating penalty and interest for income taxes, logon to tax.utah.gov/picalc.